

NTSB Order No. EA-4015

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 4th day of November, 1993

Docket SE-8721

6015A

to the report, arguing, among other things, that we should not have affirmed on appeal the admission of an exhibit that was not admissible under Board precedent when it was introduced at the hearing.¹ We agree with the Administrator both that respondent's argument lacks merit and that any error in admitting the report would not dictate reversal of the revocation order. Our decision unequivocally held that revocation would be the appropriate sanction in this case under the FAR section 61.15 charge alone even if there had been no evidence in the record of aircraft use in connection with respondent's Federal drug conviction. Thus, respondent cannot demonstrate prejudice based on any error that admission of the report may have constituted.

In his opposition to the petition, the Administrator advises, in effect, that he should not have alleged or prosecuted a violation of Section 609(c) because the conduct which led to respondent's drug conviction occurred before that section was enacted. Since, as discussed above, FAR section 61.15 provides an independent and sufficient basis for sustaining the revocation ordered by the Administrator in this case, no change in the outcome of this proceeding is warranted by the Administrator's advice. We will, however, reverse the invalid finding in our decision.

ACCORDINGLY, IT IS ORDERED THAT:

1. The petition for reconsideration is denied, and
2. The finding of a violation of Section 609(c) in Order EA-3938 is reversed.

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HAMMERSCHMIDT, and HALL, Members of the Board, concurred in the above order.

¹The Administrator has moved to strike a separate document, apparently authored by the respondent himself, concerning the circumstances surrounding respondent's drug conviction and his life subsequent to that event and urging leniency in sanction. We agree with the Administrator that this document should not be considered at this stage of the case. It not only raises evidentiary issues that were not litigated before the law judge, and thus were not subject to cross examination, it purports to reveal exonerating factors bearing on sanction that should have been evaluated in the first instance by the law judge at the hearing level. Respondent's effort to place such matters before us now, when the evidentiary record is closed, is particularly inappropriate since he heretofore had chosen not to testify or present any other evidence in his defense. The motion to strike is granted.

